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legally place it under a conservation easement. Any existing liens or encumbrances on the property must be subordinated to the conservation easement. At the time of recordation of the conservation easement, a title insurance policy must be provided to the Corps in an amount equal to the current market value of the property.

d. In the event this permit is transferred, proof of delivery of a copy of the recorded conservation easement to the subsequent Permittee or Permittees must be submitted to the Corps together with the notification of permit transfer.

The Grantee shall not assign its rights or obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws, including §704.06 Florida Statutes, and committed to holding this conservation easement exclusively for conservation purposes. The Corps shall be notified in writing of any intention to reassign the conservation easement to a new grantee and must approve the selection of the grantee. The new grantee must accept the assignment in writing and a copy of this acceptance delivered to the Corps. The conservation easement must then be re-recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the recorded conservation easement furnished to the Corps.

All reports, documentation and correspondence required by the conditions of this permit must be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232.

One commenter expressed concern about the potential impacts of the nearby phosphate processing facility on the off-site mitigation tract. This facility is located approximately 1 mile to the southwest. Given the distance of this facility and the fact that it is not connected to the drainage of the mitigation site, the Corps finds that there will be no adverse effects.

The Corps did express concern about the narrow strip of land lying between the proposed mitigation parcel and SWFWMD public lands to the east in Polk County. The applicant clarified that the strip is part of an unrelated project's

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(SAJ-2005-5292 (IP-TEH)) mitigation proposal currently under review by the State and the Corps. The Corps believes that this strip is rendered undevelopable and unusable for agriculture with the preservation of the tract proposed for this project. Therefore, this adjacent strip of land is not likely to adversely affect the proposed mitigation site regardless of whether it is preserved as part of another Corps permit or not.

Since the SWFWMD Environmental Resource Permit and the Corps permit will not have identical requirements, the following special conditions will be added to prevent non-compliance with the Corps permit:

The Environmental Resource Permit (ERP) No. 43026931.001 and special conditions are made a part of this DA permit. For the purposes of compliance with this DA permit, where the conditions of the ERP and DA permits conflict, the DA permit shall apply.

A modification of ERP No. 43026931.001 does not automatically constitute a modification of this DA permit. If the permittee proposes to change any part of the authorized activity, including the mitigation, it is the permittee's responsibility to request a modification of this DA permit from this office.

g. Conclusions of Alternatives Analysis:

The Corps concludes that the applicant has selected the least environmentally damaging practicable alternative. The resulting impact and associated lost functions will be fully mitigated through a combination of on- and off-site mitigation.

9. Evaluation of the 404(b)(1) Guidelines: The Corps reviewed the proposed project in accordance with the 404(b)(1) Guidelines. The review demonstrates that the Corps analyzed all of the alternatives and that the proposed alternative is the least environmentally damaging and practicable alternative considering expense, existing technology, and logistics. The project would not cause or contribute to violations of State Water quality standards, jeopardize the existence of any endangered species or affect a marine sanctuary. The Corps does

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not expect significant degradation and the applicant has taken all available practicable steps to minimize impacts.

a. Restrictions on Discharges (230.10 (a)-(d))	
A review of the permit application indicates that:	
1) The activity is located in a special aquatic site (wetlands, riffle and pool complexes, sanctuaries and refuges, mudflats, vegetated shallows, or coral reefs)	yes(X) no()
2) The activity needs to be located in a special aquatic site to fulfill its basic purpose.	yes() no(X)
3) It has been demonstrated in Item 8 above that there are no less damaging practicable alternatives that would satisfy the project's overall purpose.	yes(X) no()
4) The least damaging practicable alternative has no other significant adverse environmental consequences.	yes(X) no()
5) The activity causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard.	yes() no(X)
6) The activity violates applicable toxic effluent standards or prohibitions under Section 304 of the Act.	yes() no(X)
7) The activity jeopardizes the continued existence of federally listed threatened or endangered species or will likely cause the destruction or adverse modification of critical habitat.	yes() no(X)
8) The activity violates the requirements of a federally designated marine sanctuary.	yes() no(X)
9) The activity will cause or contribute to significant degradation of waters of the U.S. by causing significant adverse impacts on human health or welfare.	yes() no(X)

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10) The activity will cause or contribute to significant degradation of waters of the U.S. by causing significant adverse impacts on life stages of aquatic life and other wildlife dependent on aquatic ecosystems.	yes() no(X)
11) The activity will cause or contribute to significant degradation of waters of the U.S. by causing significant adverse impacts on aquatic ecosystem diversity, productivity, and stability.	yes() no(X)
12) The activity will cause or contribute to significant degradation of waters of the U.S. by causing significant adverse impacts on recreational, aesthetic, and economic values.	yes() no(X)
13) Appropriate and practicable steps have been taken to minimize potential adverse impacts to the discharge on the aquatic ecosystem.	yes(X) no()
b. Finding of Compliance or Non-Compliance with Restrictions on Discharge (230.12 (a) and (b))	
1) The proposed disposal site complies with the requirements of these Guidelines.	yes(X) no()
2) The proposed disposal site complies with the requirements of these Guidelines with the inclusion of appropriate and practicable discharge conditions to minimize pollution or adverse effects tot the affected aquatic ecosystem.	yes(X) no()
3) The proposed disposal site fails to comply with the requirements of these Guidelines because there is a less damaging practicable alternative that does not have other significant adverse environmental consequences.	yes() no(X)
4) The proposed disposal site fails to comply with the requirements of these Guidelines because the proposed discharge	yes() no(X)

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will result in significant degradation of the aquatic ecosystem.	
5) The proposed disposal site fails to comply with the requirements of these Guidelines because the proposed discharge does not include all appropriate and practicable measures to minimize harm to the aquatic ecosystem.	yes() no(X)
6) The proposed disposal site fails to comply with the requirements of these Guidelines because there does not exist sufficient information to make a reasonable judgment.	yes() no(X)

10. Public interest review:

a. General public interest findings:

(1) Relative extent of the public and private need:
Commenters expressed concern regarding the need for more retail in a growing retail market in Pasco County. The applicant was required to address the current need for the project given commercial enterprises that have been developed in Pasco County since 2000 and those likely to be constructed by the planned opening of proposed mall.

The applicant provided a market analysis conducted by an independent firm in 2002 and updated in 2005 and a fiscal impact analysis completed in 2004. These analyses demonstrated project need and viability in the marketplace and benefits to the local community. The total annual revenues from the project to the County are projected at \$7.7 million at build-out. These revenues include over \$3 million in sales tax returning to the County. Expenditures include general government services, police, fire, transportation, mass transit amenities, etc. and are projected to be \$1.8 million annually at build-out. County revenues will far exceed the expenditures. The annual net fiscal benefit for Pasco County from the development will reach \$5.9 million at build-out.

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Regarding private need, the landowner expects to make a reasonable return off the land investment.

(2) Practicability of using reasonable alternative locations and methods to accomplish the objective of the purposed work where there are unresolved conflicts as to resource use: See Item 8 of this document.

(3) Extent and permanence of the beneficial and/or detrimental effects, which the proposed work is likely to have on the public, and private uses to which the area is suited: Detrimental impacts are expected to be minimal although they would be permanent in the construction area. The beneficial effects associated with utilization of the property would be permanent.

PUBLIC INTEREST FACTORS	ADVERSE MAJOR / MINOR		BENEFICIAL MAJOR / MINOR		NEGLIGIBL E	NO EFFECT
Conservation						T/P
Economics			P			
Aesthetics					T/P	
General environmental concerns		T/P				
Wetlands		T/P				
Historic properties						P
Fish and wildlife values		T/P				
Flood hazards						P
Flood plain values						P
Land use						P
Navigation						P
Shore erosion and accretion						P
Recreation						P

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Water supply and conservation						P
Water quality						P
Energy needs						P
Safety						P
Food and fiber production						P
Mineral needs						P
Considerations of property ownership						P
Needs and welfare of the people				T/P		
Traffic		T				P

Note: T = Temporary and P = Permanent

b. Items of public interest: The Corps reviewed all of the public interest factors including, but not limited to, those listed below. The Corps evaluated the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. The benefits which reasonably may be expected to accrue from the proposal were balanced against its reasonably foreseeable detriments. The decision also reflects the national concern for both protection and utilization of important resources. The Corps has determined that the proposed project is not contrary to the public interest.

(1) Conservation: The Corps has determined that the project represents the least environmentally damaging practicable alternative and that all unavoidable wetland impacts have been appropriately mitigated. Pasco County changed the zoning of the project area from residential to residential/office/retail and conservation lands. Although the Corps does not challenge local zoning decisions, the use of the

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project area for a regional mall appears to be a reasonable use of the parcel given its location adjacent to Interstate 75 and a major intersection.

(2) Economics: Economic changes will occur as a result of this project. Pasco County has long been a bedroom community for Tampa and a major local growth management issue has been the lack of jobs and commercial centers in Pasco County. The project is expected to create 4,000 jobs and a significant amount of revenue for Pasco County. A fiscal impact analysis was completed by Fishkind and Associates in October 2004. This analysis demonstrated that total annual revenues from the project to the County are projected at \$7.7 million at build-out. These revenues include over \$3 million in sales tax returning to the County. Expenditures include general government services, police, fire, transportation, mass transit amenities, etc. and are projected to be \$1.8 million annually at build-out. Revenues will far exceed the expenditures. The annual net fiscal benefit for Pasco County from the development will reach \$5.9 million at build-out.

(3) Aesthetics: No specific objections were raised in regard to aesthetics. The project site is largely bordered by an interstate and two state roads as well as Cypress Creek. A vegetated tree-line will be left intact along the creek. Therefore, no significant changes in the local aesthetics are expected to occur other than the transition from an agricultural use to a commercial, office, and residential use.

(4) General environmental concerns: These concerns are captured in Items (5) and (7) below.

(5) Wetlands: The wetlands are of moderate quality as they were logged and some of them were ditched. The wetlands do provide natural biological functions such as foraging and roosting habitat for some species, especially wading birds, on a seasonal basis. The wetlands are predominantly forested (cypress) and not unique or rare in the landscape. Wetlands will have an average 25-foot buffer around them. The site does not contain wetlands set aside for study of the aquatic environment or as sanctuaries or refuges. The project is not expected to affect detrimentally natural drainage

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characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics. The site is approximately 20 miles from the coastline and therefore does not contain wetlands that are significant in shielding other areas from wave action, erosion, or storm damage. The wetlands do serve as valuable storage areas for storm and flood waters; however, floodplain compensation ponds and stormwater facilities have been designed to ensure no increased risk of flooding. Although the wetlands to be filled provide water purification functions, project alterations are not expected to adversely affect the local water quality in Cypress Creek. Stormwater ponds have been designed to maintain water quality and a stringent water quality monitoring plan will be implemented as a condition of this permit. The project is not expected to adversely impact ground water discharge as described in Item 10(b)(14) below.

Commenters expressed concern that permit issuance would set a precedent for wetland fill in high quality wetlands without regard to 404(b)(1) Guidelines and the practice of allowing floodplain compensation. The Corps has determined that this project meets the 404(b)(1) Guidelines as specified in Item 9 of this document. Floodplain compensation is considered a necessary and appropriate method to mitigate floodplain storage by the SWFWMD. Issuance of the Environmental Resource Permit by SWFWMD ensures that losses in floodplain storage have adequately been offset.

(6) Historic properties: By letter dated 20 Jun 05, the State Historic Preservation Officer stated that their review of the Florida Master Site File indicated no significant archaeological or historical resources in the project area. They also stated that because of the location and/or nature of the project, it is unlikely that any such sites will be affected. The Corps determined the project would have no effect on historic properties.

(7) Fish and wildlife values: The potential impact of the project on state-listed fish and wildlife species was assessed in detail during the Development of Regional Impact review process. Intensive surveys were completed following the survey methodology approved by the Florida Fish and Wildlife

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Conservation Commission (FFWCC). A small population of gopher tortoise was found on the site. A condition of the Development Order requires that the applicant relocate all tortoises. The American Alligator was observed using Cypress Creek, but this habitat will not be impacted. The following wading birds were observed, but no nests were found: little blue heron, white ibis, tricolored heron, and snowy egret. The gain in wood stork habitat discussed in Item 11 of this document also demonstrates a gain in potential habitat for these wading birds. No suitable habitat was found on-site for the gopher frog, Florida pine snake, or Florida mouse. The applicant is required by state law to coordinate with the FFWCC to obtain any necessary approvals and follow all regulations of the FFWCC in regard to listed species.

Other than the wetlands that exist on the project site, there is essentially no native wildlife habitat on the property. Almost all of the uplands on the property have previously been converted to bahia grass (*Paspalum notatum*) dominated pasture. The wetlands were logged and some of them were ditched. The wildlife surveys revealed that the site provides relatively little habitat for wildlife. The most valuable habitat that exists on the project site is Cypress Creek. Secondarily, the wetlands provide foraging and roosting habitat for some species, especially wading birds, on a seasonal basis.

Multiple actions will be taken to minimize potential impacts to wildlife habitat. Wetlands will have an average 25-foot buffer around them and Cypress Creek will have a minimum 50-foot buffer to any use and a 600-foot buffer from impervious surface. The remaining wetlands will be placed under a conservation easement. The applicant is required by Development Order to implement a county-approved wildlife management plan. Low Impact Development features such as treatment swales will remove pollutants and reduce potential risks of wildlife consuming toxins from stormwater ponds. Thirty-percent of the stormwater treatment pond acreage will consist of littoral shelves, shallow areas providing further wildlife habitat, especially for wading birds. Also, given the stringent water quality treatment outlined in Item 10(b)(15) of this document, wildlife using Cypress Creek should not experience increased exposure to toxins as a result of the project.

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This project is not expected to impact fishery resources, as there will be no direct impacts to Cypress Creek and the water quality monitoring plan will ensure no adverse impacts to water quality.

The project site includes areas identified as a critical wildlife linkage in the 2002 report titled "Assessment of Measures to Protect Wildlife Habitat in Pasco County" and prepared by Glatting-Jackson for Pasco County. The natural lands along Cypress Creek within the project area fall into the identified "Cypress Creek to Cypress Bridge" critical linkage. This linkage is deemed important because of its location as a "bottleneck" between large conservation lands associated with Cabbage Swamp and Cypress Swamp and the conservation lands in Hillsborough County. The entirety of Wetlands J, P, R, and S are included in this linkage. As discussed in Item 8(d) above, it is necessary to fill a portion of Wetland J to extend County Road 54 southward. The rest of the wetlands are not proposed for impact and will be placed under conservation easement. The Corps finds that the impacts to the northern tip of Wetland P will not impede wildlife movements along the creek. The extensive buffers along the creek (50 feet from any use, 600 feet from impervious surface) and planting of native vegetation within the stormwater pond area within 300 feet of Cypress Creek will preserve the integrity of this linkage. Further, the applicant will incorporate wildlife corridors into the design of the bridge (not part of this project, but rather a secondary impact).

Note: Potential impacts of the project on federally endangered species are addressed in Item 11 of this document.

(8) Flood hazards: No changes in local flood levels are expected as a result of this project. The project design incorporates substantial stormwater storage and attenuation facilities to avoid any impacts to the flood levels as a result of the proposed project. The project design will comply with all applicable County and Water Management District regulations. No structures will be located below the 100-year floodplain elevation.

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A detailed hydrodynamic hydraulic regional study was developed for this portion of Cypress Creek to determine the existing (pre-development) 100-year flood levels. The model incorporated the proposed development conditions (post-development) and demonstrated that there will be no adverse impacts to the existing 100-year flood levels as a result of the project.

This study also concludes that peak discharge rates for post-development conditions will not exceed the allowable discharge rates based upon existing pre-development conditions. Accordingly, the construction of the project and its associated stormwater management system will not result in any increased flood elevations or peak flows within the creek. Therefore, there will be no adverse impacts to adjacent properties or residents.

Issuance of the SWFWMD permit is indicative of their acceptance of this study. Furthermore, the Corps must assume issuance of the SWFWMD Environmental Resource Permit constitutes compliance with all requisite state regulations.

(9) Floodplain values: The project will have no adverse impacts to the 100-year floodplain. Measures taken to avoid and minimize floodplain impacts include use of substantial setbacks from the main conveyance area of Cypress Creek, concentration of development activities in the highest areas of the site, strategically locating the stormwater management areas in the floodplain area to maximize their benefits to the floodplain, use of retaining walls to reduce fill area, and use of floodplain mitigation areas to replace floodplain volume lost due to unavoidable fill.

Assertions that the project violates Pasco County's Comprehensive Plan contradict the County's findings. The Pasco County Board of County Commissioners, in Resolution 05-40 approved on 23 Nov 04, approved the Development Order for this project. Item 2(d) of this Development Order states that the project is consistent with the County's comprehensive plan. Subsequently, the Pasco County Board of County Commissioners approved the Amended and Restated Development Order by Resolution 05-188 on 26 Apr 05. Item 2(c) of the Amended and Restated Development Order states that the revisions to the

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Cypress Creek Town Center DRI are consistent with the Pasco County Comprehensive Plan as amended. The Corps defers to the County on local zoning issues such as this.

(10) Land use: On 23 Nov 04, Pasco County changed the land use designation of the project area from residential to residential/office/retail and conservation lands. This was not an issue of public interest during review of the Corps application.

(11) Navigation: Not a relevant issue of public interest.

(12) Shore erosion and accretion: Not a relevant issue of public interest.

(13) Recreation: While the proposed site, currently vacant and being used as pasture for cattle, could be considered "green space", this land is located in two quadrants of an interstate interchange and is appropriate for the proposed development. The project will generate substantial demand for recreational uses. The multi-family residential use will consist of 630 units and will provide their own recreational opportunities. The mall itself will serve as a gathering place for local residents and provide entertainment opportunities in the form of theaters and restaurants. Cypress Creek itself offers recreational opportunities in the form of canoeing, kayaking, wildlife viewing, and fishing. The subject parcel has been in private ownership and does not provide access for these activities. Other access points exist upstream and downstream. Therefore, recreational opportunities are expected to remain unchanged as a result of this project.

(14) Water supply and conservation: Potable water for the project will be provided by the Pasco County Utilities Department. The County has stated that it has excess capacity of 4 mgd based on the difference in permitted facility capacity and present average annual usage. The project will have minimal, if any, impact on the area's water supply.

Concerns were raised regarding the expected impacts on groundwater recharge given the close proximity of wells and the

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integrity of the aquifer. Condition 5(c)(4) of the Pasco County Development Order requires the applicant to implement a groundwater monitoring program that has been reviewed and approved by the County, the Florida Department of Environmental Protection, SWFWMD, and Tampa Bay Water. The monitoring program is required to begin prior to construction and continue for 5 years beyond project build-out. Biennial reporting is required and therefore the entities above will review the results of the monitoring to ensure no adverse impacts to groundwater resources. The Development Order also states that there shall be no excavation into the Floridian aquifer's confining layers or underlying limestone. The Development Order also requires compliance with the Wellfield Protection Ordinance (Section 612 of Pasco County Land Development Code, as amended). Given the oversight of the County through the provisions of the Development Order, the Corps has reasonable assurance that no adverse impacts will occur to groundwater resources.

Hillsborough County specifically questioned whether the potential for water level recovery from reductions in well field pumping had been taken into account in project development. The applicant verified that it had been taken into account. Seasonal high water levels were set in the field by an environmental professional and reviewed by SWFWMD. These seasonal high levels were compared to indicators of historic high pool levels and they were determined to be equivalent. Since the project is located only on the fringes of the modeled wellfield drawdown areas of the surficial aquifer and current and historic field indicators are at essentially the same elevations, it is not likely that the wellfields are currently lowering water levels in wetlands on this site. In addition, Tampa Bay Water has already reduced water production in its central system wellfields, including the Cypress Creek Wellfield and the Cypress Bridge Wellfield, down to a level of water production that has been predicted by both Tampa Bay Water and the SWFWMD to result in recovery. As required by SWFWMD, no credit was considered in either flows or elevations due to pumping. The Master Stormwater Management Plan was based on the assumption that water levels are at historic elevations.

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(15) Water quality: Given that a portion of the project drains into Cypress Creek, an Outstanding Florida Water (OFW) and a tributary to the Hillsborough River (the major source of drinking water for the City of Tampa), water quality was an issue of great concern.

Due to the location of the project adjacent to an OFW, the applicant voluntarily designed the stormwater treatment system south of S.R. 56 (the portion draining to Cypress Creek) to exceed the requirements of the State. The treatment ponds on the south side of S.R. 56 have been designed to treat the first 1.5 inches of runoff as opposed to treating only the first inch of runoff, which will benefit water quality. Low Impact Design techniques (primarily infiltration swales within the impervious area) will also be implemented to further enhance water quality.

The applicant created a surface water quality monitoring plan to ensure no adverse impacts to this important resource. The plan underwent many iterations in response to the Corps' concerns and those of other agencies. The final plan was ultimately approved by Pasco County, Southwest Florida Water Management District, Florida Department of Environmental Protection, Tampa Bay Water, Tampa Bay Regional Planning Council, and the Environmental Protection Commission of Hillsborough County. The plan requires surface water monitoring of numerous parameters at upstream and downstream locations. Baseline data is currently being collected and data will continue to be collected for 5 years after construction begins. To ensure compliance with this plan, the following special condition will be added to the Corps permit:

The Permittee will comply with the terms and conditions of the document titled "Cypress Creek Town Center Surface Water Quality Monitoring Plan" and dated February 26, 2007 (Attachment 4). All reports generated in support of this plan shall be submitted to the Corps.

In a memo dated 24 May 04, the Administrator of Public Works and Utilities Services for the City of Tampa stated that he does not anticipate any significant impact to the Hillsborough River water supply provided that the mitigation is completed in the same basin and the land is deeded to SWFWMD (as proposed).

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The Clean Water Act assigns responsibility for control of non-point sources of pollution to the states. Pursuant to 33 CFR 320.4(d), certification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, U.S. Environmental Protection Agency (USEPA), advises of other water quality aspects to be taken into consideration. The Southwest Florida Water Management District issued Environmental Resource Permit No. 43026931.001 which constitutes Water Quality Certification. Further, USEPA had no comment on the project. Based on these facts, combined with the water quality monitoring plan required by the Corps permit, the Corps does not expect any adverse impacts to water quality or downstream ecosystems as a result of the proposed project.

The project does entail stormwater treatment within wetlands A/A1. The alternative analysis demonstrated that there was no other less damaging practicable alternative. The Corps performed a functional assessment of the lost functions and compensatory mitigation was required and is accounted for in the approved mitigation plan described in Item 8(g). In addition, Florida law governing issuance of the Environmental Resource Permit requires that appropriate measures be taken to avoid adversely impacting wetlands used for stormwater treatment. Per this requirement, biological indicators have been used to design a fluctuation regime for the wetland that will maintain wetland hydroperiod. The applicant will also pre-treat water before it enters the wetland. The water will first pass through a sump and grease baffle system. This will result in the removal of most dissolved solids as well as greases and floating debris. The sumps are to be cleaned out on a regular basis.

In addition to the standard stormwater treatment system, the applicant has incorporated Low Impact Design (LID) features. LID is a relatively new group of technology-based practices that have been developed by the Maryland Department of Natural Resources for addressing suburban stormwater management. These practices were designed to ensure that a site's post-development hydrologic functions mimic those of the pre-development

condition. These functions include groundwater recharge, infiltration, and frequency and volume of discharge. Some examples of LID features include infiltration systems (infiltration swales, infiltration drainfields, dry wells and level spreaders), filtering systems (filter strips, exfiltration trenches/dry swales) and vegetated conveyance systems. The LID features will be installed in parking lots and based on studies of LID efficiencies, will provide an additional level of water treatment prior to the water reaching the treatment wetland.

(16) Energy needs: Not a relevant issue of public interest.

(17) Safety: Not a relevant issue of public interest.

(18) Food and fiber production: Not a relevant issue of public interest.

(19) Mineral needs: Not a relevant issue of public interest.

(20) Property ownership: Not a relevant issue of public interest.

(21) Needs and welfare of the people: Potential impacts on adjacent property owners, surrounding communities (including, but not limited to, Lutz, an unincorporated area of Hillsborough County), and nearby public lands and restoration projects were analyzed.

The only residential properties that are directly adjacent to the project are south of State Road 56 and west of the site. Impacts to these residents have been minimized to the greatest extent possible. Representatives of The Jacobs Group met with several property owners on four separate occasions. These meetings resulted in a realignment of the proposed County 54 extension away from the western edge of the project site and in zoning conditions that include landscaped buffers to block the view of the property owner most impacted by the road, restrictions on lighting, and limits on the types of uses that can be developed along County Road 54. The owner of the undeveloped property (King Ranch) south of the project site has

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the ability to develop their property with access from County Line Road, and, they are processing plans with Pasco County to develop the King Ranch as retail, office and residential. There is no reason to expect additional wetland impacts within the King Ranch.

Four "communities" are within the area surrounding the project site. These include unincorporated areas of Wesley Chapel and Land O'Lakes in Pasco County, New Tampa, which is in the City of Tampa, and Lutz, an unincorporated area in Hillsborough County. The residents of these communities will benefit from convenient access to regional shopping, restaurants, movie theaters and entertainment and will no longer have to drive 10 to 15 miles to the Brandon Town Center, Citrus Park Mall or University Square Mall for regional shopping opportunities. The proposed project will create an estimated 4,000 job opportunities for residents, many of whom currently drive long distances to work. In Pasco County, residents will benefit from revenues generated by the project. These revenues will fund road construction, police and fire protection, schools, and the acquisition of environmentally sensitive lands. The Wesley Chapel Chamber of Commerce has publicly expressed strong support for development of the project.

Three public lands are close to the project site. A Florida Department of Transportation wetland mitigation site lies adjacent to the creek east of Interstate 75. It is downstream of the project site adjacent to Cypress Creek. There is no access to the mitigation site from the project site. Given the developer commitment to protect water quality in Cypress Creek, it is improbable that development of the proposed project could impact this mitigation site.

The Southwest Florida Water Management District property called "Cypress Creek" is located northwest of the project site. The closest part of the SWFWMD site is approximately 0.5 miles from the project site. It lies on the opposite side of State Road 54 and County Road 54 along the creek. It is upstream of the project site. There is no access to this property from State Road 54 or County Road 54. Since it lies upstream and has no access, it is improbable that development of the project site could affect this SWFWMD property. Development of the proposed

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project should not affect future management of the SWFWMD property. The most probable management needs, controlled burns, will not be affected by development of the site as a mall. Since residential housing, which is more sensitive to smoke, already lies between the project site and the SWFWMD property, that housing, not the mall, would control the conditions under which controlled burns could occur.

The second public land is the Cypress Creek Preserve. It lies in Hillsborough County. Most of the site lies within the triangle created by the juncture of Interstate 75 and Interstate 275, although there is an outlying parcel west of Interstate 275. This property belongs to Hillsborough County. The northernmost extent of the Cypress Creek Preserve is approximately 1.25 miles south of the project site. Between the project site and the Hillsborough County site, the creek flows through extensive floodplain swamp and past multiple residential developments. Given the developer commitment to protect water quality in Cypress Creek, adverse impacts to Cypress Creek Preserve are not expected. As with the SWFWMD property, the primary management need of the Cypress Creek Preserve is a controlled burn. Close proximity of two interstate highways, not the proposed project, will limit burn management of the Cypress Creek Preserve.

Commenters were also concerned about the potential for the project to cause urban sprawl. Urban sprawl is a land development pattern that is defined by the State as having large expanses of single use, low-density development and/or including development that does not maximize the use of existing or proposed infrastructure thereby creating a financial burden on the community. By meeting a need of the large amount of existing residential development in south Pasco County and northeastern Hillsborough County, travel patterns will be changed in a positive way. Instead of traveling south to existing regional malls, these trips will be shortened. The new pattern will shorten travel times and trip lengths and reduce traffic congestion. Shortened trip lengths and times will reduce the consumption of gasoline and reduce air pollution. The proposed project site will maximize the use of existing infrastructure as it is adjacent to the regional road network and to public sewer and water facilities. Therefore, the

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project is not expected to cause urban sprawl. The Corps also recognizes that zoning and land use issues are largely a local issue and defers to local city, county, and state governments on these issues.

(22) Traffic: Due to the change in land use from agriculture to residential and commercial, there will be an increase in the amount of local traffic. Additionally, the mall is a destination and, hence, it will change traffic patterns. Currently, most traffic with a mall destination passes the project site on either Interstate 75 or State Road 56 and heads south to existing malls in Hillsborough County. The increase in traffic and change in traffic patterns will be mitigated through the applicant's widening of State Road 54/56 and the extension of County Road 54.

11. Threatened or endangered species:

a. Wood stork

The USFWS concurred with the Corps' determination that the project may affect, but is not likely to adversely affect, the wood stork. The project area lies within the core foraging area of 5 wood stork breeding colonies, but is not within the primary or secondary zones of any. Thirty-seven survey days over 4 years (2002-2005) did not yield any sightings of wood storks on the project area. Corps personnel did not observe any wood storks during the course of 3 visits to the site. USFWS determined that there are currently 16.22 acres of potential wood stork habitat on the site. Post-construction, USFWS estimates the project will result in 21.35 acres of potential wood stork habitat including Mitigation Area M-3 and littoral shelves within stormwater ponds. USFWS recommended that a hedge of trees or tall shrubs be planted between stormwater ponds "A" and "D" and the proposed construction activities to minimize wood stork road kill. The Corps finds this recommendation reasonable and enforceable. The following special condition will be added to the Corps permit:

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Within 60 days of final grading of stormwater ponds "A" and "D", the Permittee shall plant a continuous hedge of native trees and/or tall shrubs between each pond and the adjacent development and/or roads.

USFWS also recommended that grounds maintenance operators be trained to avoid use of fertilizers, herbicides, or disposal of other contaminants around wetlands and stormwater ponds to preclude impacts to wood stork food sources. The Corps finds this provision unenforceable and will not add a special condition to the Corps permit to require this measure. The Corps believes the surface water quality monitoring plan (Attachment 4) will adequately ensure that water quality is not adversely impacted.

One commenter noted the applicant's alternatives analysis recognized potential wood stork habitat on Site #1, but not on the proposed site (#12). The Corps and the applicant did, in fact, recognize the existence of potential wood stork habitat on the project site as describe above. It did not appear to the Corps that there were notable differences in potential endangered species habitat among alternative sites. Regarding the wood stork, no rookeries were noted on any site, and all sites fall within the 18-mile foraging area of some wood stork rookery, making them very similar in comparison.

b. Eastern indigo snake

The USFWS concurred with the Corps' determination that the project may affect, but is not likely to adversely affect, the eastern indigo snake. This determination was based on the applicant's commitment to abide by USFWS' guidelines to protect this species. To ensure compliance with this commitment, the following special condition will be added to the Corps permit:

That the permittee will comply with the terms and conditions of the 2004 Standard Protection Measures for the Eastern Indigo Snake, attached.

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c. Scrub jay

The Corps determined that there was no scrub jay habitat on the site; therefore, there would be no effect on this species. USFWS reached the same finding.

d. Bald eagle

The Corps determined that the project would have no effect on the bald eagle. USFWS reported that the closest bald eagle nest is at 6.5 miles and also reached this finding.

e. Gulf sturgeon

The Corps determined that the project would have no effect on the gulf sturgeon. One commenter claimed that he saw a large fish in Cypress Creek that may have been an endangered gulf sturgeon. The Corps discovered that hatchery-raised gulf sturgeon were released by the Florida Fish and Wildlife Conservation Committee (FFWCC) in 2000 in the Hillsborough River into the freshwater upstream of the dam and reservoir. Mr. Danny Roberts of FFWCC conducted the study and stated that he lost track of the released sturgeon while their transmitters were still functional. He believes they were flushed downstream and out of the river during a tropical storm, during which all gates in the Hillsborough River and Bypass Canal were opened. Furthermore, since adult sturgeon primarily feed in marine or brackish water, the expected lifetime of a fish released in freshwater above a dam is extremely limited.

f. West Indian manatee

The Corps determined that the project would have no effect on the West Indian manatee. A commenter expressed concern that the project may impact this species. The Corps concludes that negative impacts to the West Indian manatee are highly improbable. Manatees cannot access the upper reaches of the river system due to the presence of the City of Tampa dam, located over 25 miles downstream from the project area. Implementation of the surface water quality monitoring plan (Attachment 4) will also ensure downstream habitats are not adversely affected.

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12. Secondary Impacts:

The Corps evaluated potential secondary impacts of the project that are reasonably foreseeable, but are later in time or farther removed in distance. The Corps identified the following secondary impacts:

a. State Road 54 extension

As explained above in Item 8(d), the Corps analyzed the route of County Road 54 within the project area as a direct impact and the portion south of the project area as a secondary impact. The northern starting point of the road is dictated by the existing State Road 56 and County Road 54 intersection. Impacts to Wetlands J and K were unavoidable given this constraint. However, retaining walls will be installed along the west side of the road to minimize impacts on remaining portions of Wetland J. Impacts to Wetland R will be completely avoided by use of a retaining wall on the east side of the road. The road was aligned to cross Cypress Creek at a location where no wetlands would be impacted, between wetlands R and S. South of Cypress Creek lays King Ranch. Pasco County (Wade Trim 2006) completed a route study that examined 3 different alignments from Cypress Creek to County Line Road. An alternative was selected that had no impacts to aquatic resources. Therefore, secondary impacts south of the project area due to the extension of County Road 54 are not expected.

The extension of State Road 54 requires a bridge over Cypress Creek. To avoid and minimize secondary impacts that may occur in connection with the bridge, the applicant will 1) use a bridge rather than culvert to avoid impacts to flow, 2) route stormwater from the bridge into a stormwater pond (not the creek), 3) fence the bridge so that trash and debris do not blow into the creek, and 4) provide for wildlife access beneath the bridge.

b. Changes in land uses on adjacent lands

A mixed-use project is proposed for King Ranch, which is located immediately south of the project. King Ranch is currently accessible from County Line Road in an area that is developing

rapidly. While King Ranch itself is not a secondary impact of the project, the nature of the King Ranch development will likely be different. Without the proposed project, there would be no access from the north and the King Ranch development would likely not provide the equivalent economic benefit to Pasco County. With access from the north, King Ranch is likely to provide more commercial development. Without access from the north, King Ranch would most likely yield residential development. Since these uses are similar in the impacts on the aquatic environment, the Corps does not anticipate any significant secondary impacts.

c. Changes in functions and values of remaining on-site wetlands

Potential secondary impacts to on-site wetlands may include changes in wetland functions and values due to proximity of the development and changes in hydrology due to construction of surface water management ponds or potable water production. Measures to avoid and minimize these impacts are as follows:

(1) Buffers between the wetlands and the development will be maintained with a minimum average width of 25 feet.

(2) To avoid the dewatering of adjacent wetlands, surface water management ponds have been carefully placed and designed to treat surface water runoff and manage water levels such that adjacent wetlands are protected. The appropriate hydrological modeling has been conducted by Ardaman and Associates.

d. Effects of stormwater treatment with wetlands

The project does entail stormwater treatment within wetlands A/A1. The alternative analysis demonstrated that there was no other less damaging practicable alternative. The Corps performed a functional assessment of the lost functions and compensatory mitigation was required and is accounted for in the approved mitigation plan described in Item 8(g). In addition, Florida law governing issuance of the ERP permit requires that appropriate measures be taken to avoid adversely impacting wetlands used for stormwater treatment. Per this requirement,

biological indicators have been used to design a fluctuation regime for the wetland that will maintain wetland hydroperiod. The applicant will also pre-treat water before it enters the wetland. The water will first pass through a sump and grease baffle system. This will result in the removal of most dissolved solids as well as greases and floating debris. The sumps are to be cleaned out on a regular basis.

The Corps finds that the project will not result in any significant secondary impacts. Those potential impacts that have been identified above have been avoided and minimized to the maximum extent practicable.

13. Cumulative impacts: The Corps instructed the applicant to complete a comprehensive cumulative impact analysis pursuant to 40 CFR § 1508.7, with a focus on wetlands, water quality, and flooding. The analysis considered the incremental impact of the proposed project when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. The Corps agrees with the findings of the report titled "Cypress Creek Town Center Cumulative Analysis", dated August 2006, and prepared by Biological Research Associates, that the project will not have any significant cumulative impacts.

14. Essential Fisheries Habitat (EFH): The public notice included an initial determination that the project would not have an adverse impact on EFH or Federally managed fisheries. The NMFS did not provide any EFH conservation recommendations in response to the public notice. Therefore, the Corps is satisfied that the consultation procedures outlined in 50 CFR Section 600.920 of the regulation to implement the EFH provisions of the Magnuson-Stevens Act have been met.

15. Public Hearing Evaluation: Requests for a public hearing were received from: Mr. Ralph Brookes representing Mr. Bob Jones, Ms. Shirley Jones, and Ms. Leigh Jefts, Ms. Leslie Blackner, representing Floridians for Environmental Accountability & Reform (FEAR), Ms. Denise Layne, representing

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Sierra Club Tampa Bay Group, and 15 individuals. On 14 May 07, the Corps denied these requests. A public hearing is not held unless additional information is necessary to make a decision on the application. The Corps reviewed the information provided by these commenters and concluded that substantive additional information would not be received and that a public hearing would not benefit the decision-making process on this permit application.

16. Determinations:

a. Finding of No Significant Impact (FONSI): Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be required.

b. Compliance with 404(b)(1) Guidelines: Having completed the evaluation in paragraph 8 above, I have determined that the proposed discharge complies with the 404(b)(1) guidelines.

c. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

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d. Public Interest Determination: I find that issuance of a
Department of the Army permit is not contrary to the public
interest.

PREPARED BY:

15 May 07



Tracy Hurst
Project Manager
West Permits Section

REVIEWED BY:



Charles A. Schnepel
Chief, West Permits Section

APPROVED BY:



Paul L. Grosskruger
Colonel, U.S. Army
District Commander